



GRIC

Foundations for Prosecution Conference

October 19 – 23, 2020
Virtual Via Zoom

OPENING STATEMENT

Presented by:

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Deputy Pinal County Attorney

Distributed by:

ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL
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Phoenix, Arizona 85012

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The Opening Statement

Amy Diederich

Deputy County Attorney

Pinal County Attorney's Office

WHY?



How?

Keys to a great opening:

- Theory
- Theme
- Exceptional Storytelling



Opening statements

■ Opening Outline:

■ Theme/Attention-Getter

- Communicate your theme and get the jury's attention

■ Narrative (Theory)

- Preview the case with compelling storytelling
- Deal with weaknesses up front and on your terms

■ Charges

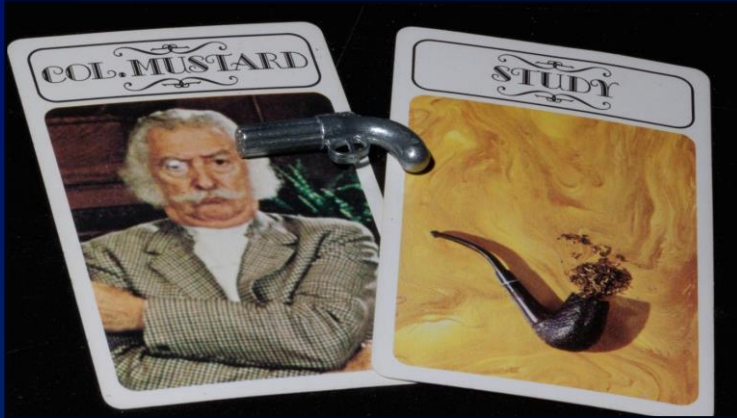
- Relate facts to charges

■ End with a call to action/Theme

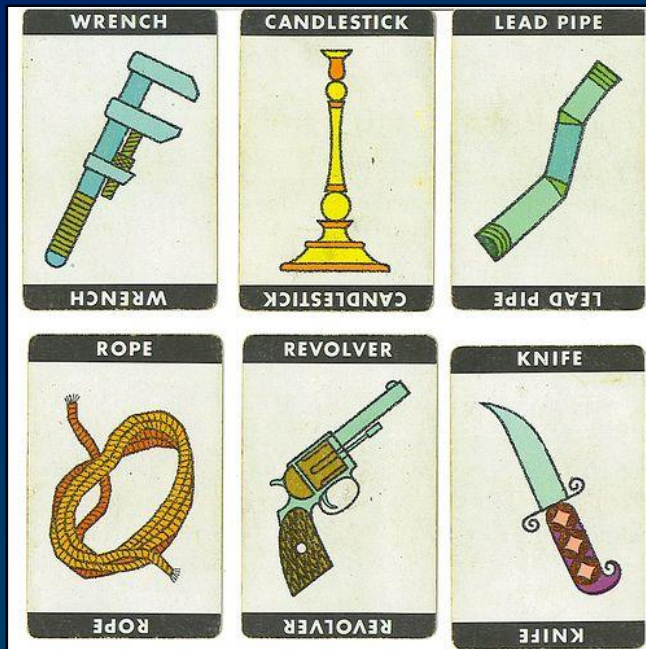
Case Theory

YOU CAN LIVE
WITHOUT A THEME;
YOU WILL DIE
WITHOUT A THEORY

Theory



- Theory is a coherent, accurate, detailed narrative of what happened



- How was the crime committed???

Theory

- “Why the LAW says you win”
 - Your opening must contain a narrative that incorporates all facts into a cohesive account of how the crime was committed
 - This will require going outside the police report!
 - Legal=elements (who, what, when, where)
 - Factual=why and how

Theory

- Where do we go wrong?
 - We tell the narrative from the perspective of the investigating officers
 - We limit our narrative to the facts contained in the police report
 - We don't force the jury to choose between our narrative and the Defense's

ON 11/02/2015 AT APPROX 0033 HOURS, I WAS CONDUCTED PATROL IN MY FULLY MARKED PATROL VEHICLE, TRAVELING EASTBOUND IN THE #1 LANE ON W GLENDALE AVE, JUST WEST OF THE INTERSECTION AT N 62ND AVE.

I OBSERVED A MALE BICYCLIST RIDING IN THE ROADWAY ON N 62ND AVE, JUST SOUTH OF W GLENDALE AVE. THE BICYCLIST WAS TRAVELING SOUTH BOUND, IN THE NORTHBOUND LANE OF TRAVEL, WHICH IS A CIVIL TRAFFIC VIOLATION UNDER ARS 28-812, APPLICABILITY OF TRAFFIC LAWS TO BICYCLE RIDERS.

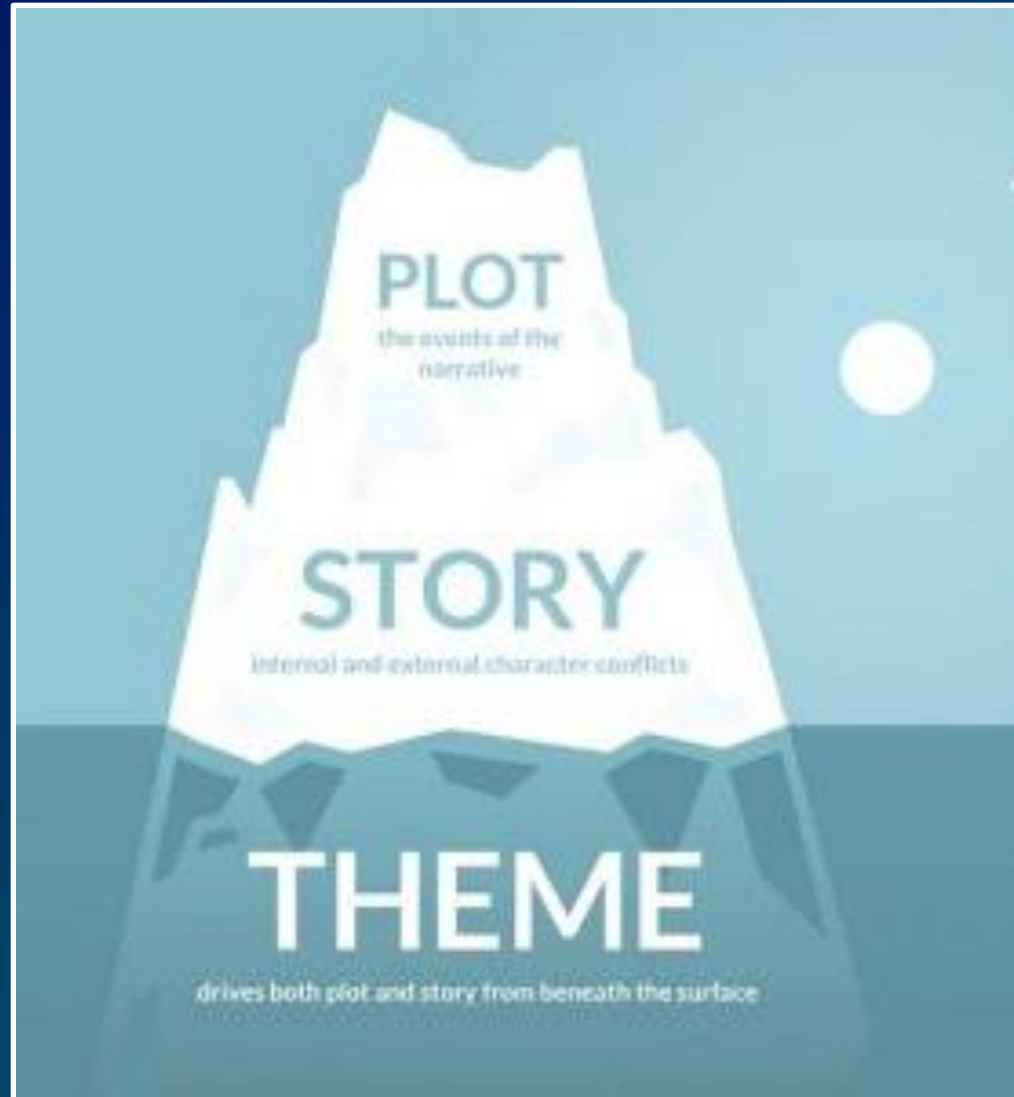
I ATTEMPTED TO CONDUCT A TRAFFIC STOP ON THE INDIVIDUAL (S1 CHRISTOPHER JOVON JOHNSON) BY ACTIVATING MY OVERHEAD RED AND BLUE LIGHTS. THE INDIVIDUAL LOOKED BACK AT MY VEHICLE, AND THEN BEGAN TO AGGRESSIVELY PEDAL HIS BICYCLE FASTER, IN AN ATTEMPT TO ELUDE THE TRAFFIC STOP.

I FOLLOWED THE INDIVIDUAL APPROX 1/2 MILE TO 6139 W LAMAR RD, WHERE HE THREW HIS BICYCLE ON THE GROUND AND STARTED RUNNING.

Reasonable Doubt?

STATE THEORY	DEFENDANT'S TESTIMONY
D riding bike down the street	D riding bike down the street
D sees police and flees	D sees police and flees
Police search D and find meth	Police search D and find meth

Theme



Theme

- A phrase or idea that explains what is at the heart of the case
 - Why should the jurors care?
- Often, the theme should address your case's WEAKNESS (*i.e.*, the defense)
 - How is he going to try to beat you

Theme

- A good theme should make you feel something
 - First words out of your mouth in opening
 - Repeatable throughout trial
 - Moral persuasion
-
- Format: consider trying “this is a case about...”

How do we get there?

- Start by thinking about what the Defendant did that deserves punishment
- This is NOT simply how did the Defendant violate the law
- This is why the jury should be morally outraged by his behavior

Theme - EXAMPLE

■ FACTS:

- Robbery
- Victim beaten nearly to death
- Victim has no memory of assault
- Permanent memory loss and speech/motor delay

“This case is about a vicious assault Tyler will never remember, on a night he’ll never forget.”

Theme - EXAMPLE

■ FACTS:

- Undesirable victim. Long crim history and substance abuse issues.
- Drug deal gone bad, 4 shots at victim
- Victim MIA, not available to testify

“This is a case about a victim who had nothing in life except the possibility of one day turning things around. On this night the defendant decided she didn’t deserve even that, so he made four attempts to take away the last thing she had – her future. ”

State v. Adam Chavez



- State's Theme:

“Adam Chavez was the driving force behind the bullet that killed Matthew Clowers. Just because he didn't pull the trigger, doesn't mean he should get away with it”



Trial begins in 2013 fatal shooting

Story Comments

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Visiting CG exhibit shows

Closure proves elusive

While angry at Chavez for ruining her life and being the driving force that led to Matthew's death, Stacy said she was killed.

Chavez guilty

First-degree murder among 6 charges

By JENNIFER HARRIS

EVIDENCE — A final finding was handed down Thursday in the case of Adam Chavez, including first-degree murder.

It was the conviction in a three-day trial that Chavez was culpable for the death of Matthew Clowers.

Chavez, 31, was found guilty of first-degree murder, six counts of assault on a child, and six counts of possession of a firearm.

The jury also found Chavez guilty of six counts of possession of a firearm, six counts of possession of a firearm, and six counts of possession of a firearm.

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COTTON DAYS

"Adam Chavez is the driving force behind the bullet that killed Matthew Clowers," she said, adding that just because he didn't pull the trigger doesn't mean Chavez wasn't legally responsible for Clowers' death.

Clear



Verizon LTE

11:11 AM

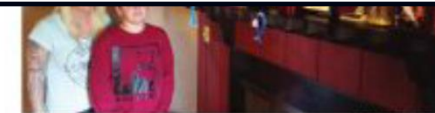
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CELEBRATING EASTER SERVICES AND IDEAS 6-8A
Winter visitor growing her CG cactus sanctuary | 9A
Pinal improves to become 3rd healthiest county in the state | 9A
CASA GRANDE Dispatch
SUNDAY

Deputy Court

"Adam Chavez was



Stacy Clowers and her 12-year-old son, Matthew Clowers, stand in a room in their home with photos and mementos of their son.

Conviction doesn't help fiancée, child cope with loss

By JENNIFER HARRIS

Since Adam Chavez's conviction for first-degree murder, Stacy Clowers has been struggling to cope with the loss of her son, Matthew.

Chavez was found guilty of first-degree murder, six counts of assault on a child, and six counts of possession of a firearm.

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battles Picacho Peak State Park embraces history

By JENNIFER HARRIS

Picacho Peak State Park is embracing its rich history and offering visitors a unique experience.

The park is home to a variety of historic sites, including the Picacho Peak Battlefield and the Picacho Peak Fort.

Visitors can learn about the park's history through guided tours and exhibits.

The park is also a popular destination for hiking and outdoor recreation.

For more information about the park, visit the Picacho Peak State Park website.

The park is located in the heart of the Pinal County desert landscape.

It is a beautiful area with stunning views of the surrounding desert.

The park is a great place to spend a day with family and friends.

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Arizona state flag.

Arizona is model for how Trump might win

By JENNIFER HARRIS

Azizona is a model for how Donald Trump might win the 2016 presidential election, according to a new report.

The report, released by the Heritage Foundation, shows that Arizona has a high percentage of the population that supports Trump's policies.

It also shows that Arizona has a high percentage of the population that is opposed to the current administration.

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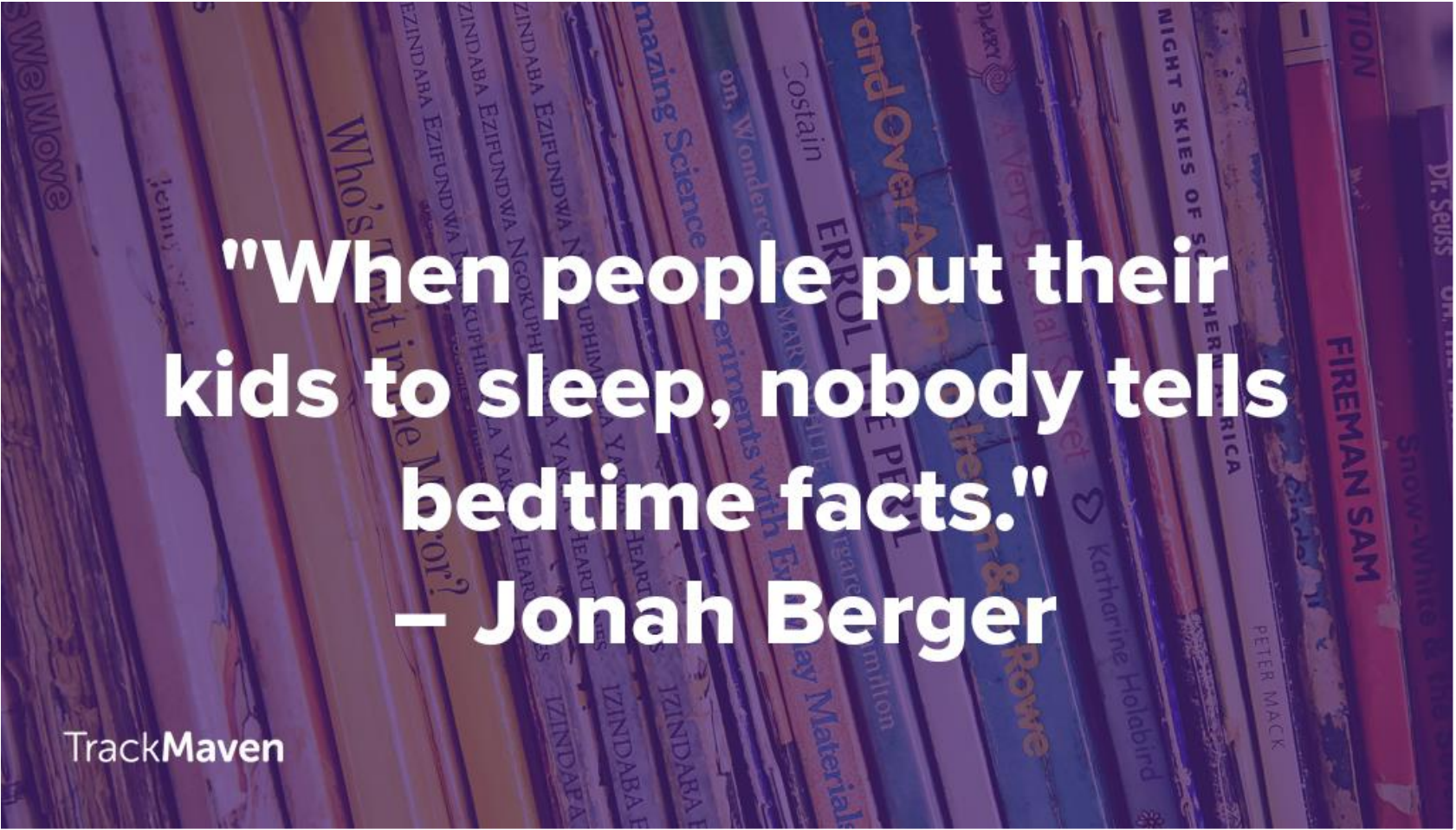
Storytelling



Narrative

- The Best Story Wins:
- If you do not offer them the truth of the case through your narrative, they will create a story of their own
- The FACTS of the case are not the STORY of the case





**"When people put their
kids to sleep, nobody tells
bedtime facts."
– Jonah Berger**

TrackMaven

Tell the Story of Your Case

- Use your case theory to form a narrative about how the crime was committed and what makes the Defendant guilty
- The Facts of your case are not the story of your case
 - Highlight important facts
 - Be detailed where appropriate, but leave some things to keep jury interested
- Think about ways to describe scenes and events using all 5 senses
- Weave in your weaknesses

Narrative - Where to Begin

- Determine the Order
 - Chronological
 - Crime
 - Discovery
 - Start at end and explain how it got to that point
 - Start at a significant point in the story
- Determine the Point of View
 - Storytelling is more compelling when you pick a narrative perspective of an involved party rather than an omnipotent POV

Goal of Clarity and Simplicity:

■ Compelling Points of View:

1. The Victim
2. The Defendant
3. An important witness

The police officer  who wrote the DR

Choosing an interesting narrative perspective will make your story much more engaging, compelling, and easy to follow

Descriptive Language



- Contrast :
- “The Defendant pulled out a gun and pointed it at the victim” with...
- “The Defendant stabbed the victim 14 times causing horrible injuries” with...

Descriptive Language

DESCRIPTIVE WORDS			
Large	Fast	Said	Hard
big colossal enormous gigantic huge massive substantial tremendous	accelerated active agile brisk nimble quick speedy swift	asked called exclaimed remarked replied responded stated told	challenging complicated demanding grueling puzzling rigid tough tricky
Happy	Kind	Small	Walk
blissful cheerful delighted elated glad jolly jovial joyful	benevolent considerate courteous helpful loving patient sweet thoughtful	diminutive little miniature minute petite teeny tiny wee	hike march pace saunter shuffle stroll strut wander
Funny	Easy	Run	Sad
amusing comical entertaining gleeful hilarious humorous whimsical witty	apparent carefree effortless manageable obvious simple snap uncomplicated	dart dash jog race rush scamper scurry sprint	dejected depressed disheartened forlorn gloomy glum joyless unhappy



Anticipate Defenses

Your narrative can be used to subtly address these

Think about how the Defendant plans to beat you BUT

Do not make promises about the Defense's case



Anticipate Defenses

- Do NOT argue
- Do NOT say “the Defense is going to claim...”
- Instead, give them things to look for...
 - (theme related?)



“Bad” Facts

- Address problems head-on
 - Victim/Witness with criminal history
 - Mishandled investigation or lack of evidence
- It's not enough just to draw the sting. You must incorporate the “bad” facts into your theory.
 - Example: The victim's criminal past in this case is no accident. The Defendant chose a victim he thought would never tell, and was confident that even if she did, no one would believe her.

Dealing with Weakness

- Attribute “bad facts” to the Defendant
 - Who chooses who the witnesses and victims are in a criminal case?
 - No fingerprints? No videotape? No DNA? – that’s exactly the way the Defendant wanted it
 - Then incorporate into theme/theory: Defendant preys upon the weak; never the powerful, or those with a voice, only the defenseless, the kind he thinks no one cares about

Using Visuals

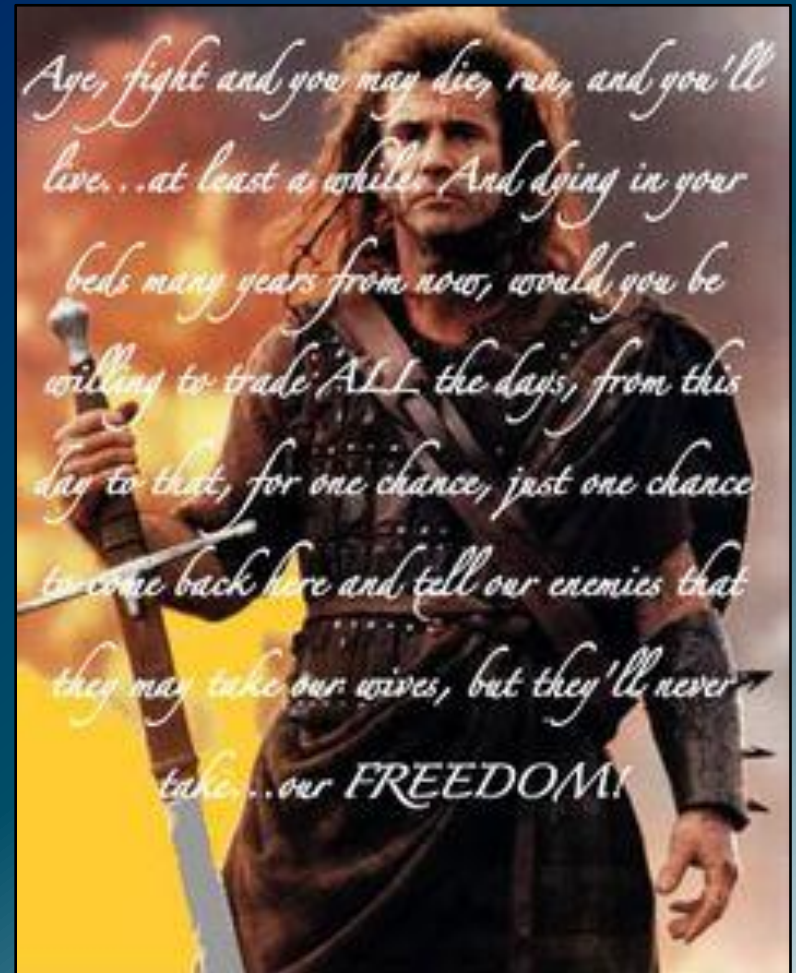
- Using visuals in opening can sometimes greatly enhance your presentation
- They can also greatly hinder it if not done correctly
- Never use a powerpoint presentation as a substitute for notes or memorization

State the Charges

- At the conclusion of your narrative, relate the facts to your charges in this case
- “For these reasons, Defendant is charged with...”

Finish Strong

- Theme
- Call to Action



Opening Statements

What to Avoid:

- Excessive introductions
- What I say is not evidence...
- The evidence will show...
- The purpose of the opening statement...
- Inform about the law
- The witness will testify that....

Opening Statements

- A word about delivery
 - Use of notes
 - Word choice
 - Movement for impact vs. pacing
 - Use of podium
 - Use of exhibits



Opening Statements

- Primacy

- People will believe what they hear first

- Start out strong!

- Get their attention

- This is your chance to shape the narrative of your case

- Recency

- People will remember what they hear last

- End strong! – go back to your theme

- Be confident in telling the jury what you want.

Questions???

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